

**In the United States District Court for the
Western District of Oklahoma**

ARBITRATION HANDBOOK

COURT - ANNEXED ARBITRATION

- A Court Dispute Resolution Program for Early Settlement Assistance
[Reference LCvR16.3, Supp. §§5.1 - 5.12]

History & Introduction:

Established by Local Rule in this Court in 1985 as the Court's first early dispute resolution program utilizing a panel of court-approved attorneys to assist the Court, it was initially authorized by the Judicial Conference of the United States and later by Congress with the Judicial Improvements Act of 1988. It was one of the original ten federal pilot courts providing mandatory but non-binding arbitration services, and was the first of its particular kind in the State of Oklahoma.

Today this process is authorized by the Alternative Dispute Resolution Act of 1998 (*See* 28 U.S.C. §§ 654-658) and remains available in this Court to parties who wish a more decisional or adjudicatory procedure to assist resolution of a case filed in this Court or who wish to use the administration of this program to engage in a binding arbitration. Originally intended for the less complex, lower dollar cases, it was mandatory for all cases valued at or under \$100,000 and primarily assisted parties by providing a deadline as well as a more familiar trial-like experience for counsel and clients to evaluate their case and receive a non-binding award from an attorney arbitrator of their choice. Today the Court offers this program for parties and counsel who agree and consent to its use.

Purpose & Goal:

The purpose of court-sponsored arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than a full trial. The award (a proposed judgment) in a non-binding arbitration may either: become the judgment in the case if all parties accept it, or serve as a starting point for settlement discussions.

Process:

If non-binding arbitration is selected as the early ADR choice at the time of the Status and Scheduling Conference, the Court will refer the case to arbitration. At the election of the parties, either one arbitrator or a panel of three arbitrators presides at a hearing where the parties present evidence through documents, other exhibits and limited oral testimony. The application of the rules of evidence is relaxed somewhat in order to save time and money. The process includes important trial-like procedures and creates good opportunities to assess the impact and credibility of key witnesses. Parties may use subpoenas to compel witnesses to attend or present documents; witnesses testify under oath through limited direct and cross-examination; and the proceedings can be transcribed and testimony could, in some circumstances, be used later at trial for impeachment.

The Arbitrator(s) applies the law to the facts of the case and issues a non-binding award on the merits. An Arbitrator does not "split the difference" and does not conduct mediations or settlement negotiations.

Preservation of Right to Trial:

Either party may reject the non-binding award and request a trial *de novo* before the assigned judge, who will not know the content of the arbitration award. If no such demand is filed within the prescribed time, the award becomes the final judgment of the Court and is not subject to appellate review. There is no penalty for demanding a trial *de novo* or for failing to obtain a judgment at trial that is more favorable than the arbitration award. Rejecting an arbitration award will not delay the trial date.

See LCvR16.3, Supp. §§ 5.9 and 5.10.

Parties may stipulate in advance to waive their right to seek a trial *de novo* and thereby commit themselves to be bound by the arbitration award. *See* LCvR16.3, Supp. §5.12 and Binding Arbitration below.

The Arbitrator(s):

The Court provides the parties a list of 10 trained arbitrators. Taking turns, the parties strike four names and rank the remaining six in order of preference. The Court attempts to assign the parties' first choice. Alternatively, if counsel can agree on the arbitrator, a Selection and Arrangements document may be completed, e-filed with proposed order Appointing the Arbitrator to be submitted to the Court

All arbitrators on the Court's panel have the following qualifications: admission to the practice of law for at least 5 years; a member in good standing with the bar of this Court or a member of the faculty of an accredited law school; determined by the Court to be competent to perform the specific program duties; knowledgeable about civil litigation in federal court; and have the requisite skills and court training. Currently arbitrators in non-binding arbitration are paid by the Court - \$150.00 per hearing or \$100.00 per arbitrator serving on a panel.

Attendance:

The following individuals are required to attend the Arbitration Hearing: the lead trial attorney for each party; clients and/or client representatives with knowledge of the facts AND full settlement authority; any witnesses compelled by subpoena. Other interested entities such as insurers and indemnitors of parties shall also attend. *See* LCvR16.3, Supp. §5.5

Confidentiality:

The arbitration award is not admissible at a subsequent trial *de novo*, unless the parties stipulate otherwise. The award itself is sealed upon filing and may not be disclosed to the assigned judge until the court has entered final judgment in the action or the action is otherwise terminated. Recorded communications made during the arbitration may, for limited purposes, be admissible at a trial *de novo*. *See* 28 U.S.C. §§ 652(d), 657 (b) and (c)(3).

Timing & Place of Hearing:

An arbitration may be requested at any time but is typically referred at status and scheduling conferences if all parties so agree and consent. Non-binding arbitrations are typically held in the U.S. Courthouse.

The arbitration hearing is generally a “no later than” date agreed to by the parties and set forth in the scheduling order or other order referring the case to arbitration and usually before the discovery completion date and not less than 30 days before the trial date. The actual hearing date is usually set by the arbitrator(s) after consultation with the parties.

Written Submissions:

The parties exchange and submit written statements or Arbitration Summaries to the arbitrator(s) at least 3 days before the arbitration or as the Court or arbitrator may otherwise direct. The statements are not filed with the Court. *See* LCv16.3, Supp. §5.6.

Appropriate Cases/Circumstances:

All civil cases in which the parties are represented by counsel are eligible. Cases with the following characteristics may be particularly appropriate for arbitration: only monetary (and not injunctive) relief is sought; the complaint alleges personal injury, property damage or breach of contract; the amount in controversy is less than \$150,000; the case turns on credibility of witnesses; the case does not present complex or unusual legal issues.

In-appropriate Cases/Circumstances:

Cases that may not be referred to non-binding arbitration pursuant to the ADR Act of 1998 (28 U.S.C. § 654) are those where

1. the action is based on an alleged violation of a right secured by the Constitution of the United States;
2. jurisdiction is based in whole or in part on 28 U.S.C. § 1343 (Civil rights and elective franchise);
3. the relief sought consists of money damages in an amount greater than \$150,000.

Cost:

There is no charge to the litigants for using this court-sponsored program other than their own time and their attorney's time and fees.

VOLUNTARY BINDING ARBITRATION

- Extra-Judicial Dispute Resolution

[Reference LCvR16.3, Supp. § 5.12 and §12.1]

If a case is in the non-binding arbitration program, at any time prior to the hearing, the parties may waive their right to a trial *de novo* by written stipulation and proceed as in voluntary arbitration understanding that state and federal law governing review of awards in such circumstances shall govern.

If a case is in this Court, all parties, by written agreement, may voluntarily request the case to be stayed and the case or portions of the case be referred to binding arbitration again with the clear knowledge that provisions of state and federal law governing voluntary arbitration shall control. Use of the arbitration program's administration may be requested. Costs of such arbitrations are to be privately arranged with the arbitrator.

**Questions for use of Arbitration in this Court may be directed to the ADR Administrator
(405)609-5078**